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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,569	02/27/2004	Anton Stempfle	2001P14034WOUS	9444
46726 7590 03/25/2011 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562				
EXAMINER JIANG, CHEN WEN				
ART UNIT		PAPER NUMBER		
3784				
NOTIFICATION DATE		DELIVERY MODE		
03/25/2011		ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANTON STEMPFLE, CHRISTIAN MAYERSHOFER, RAINER  
BRACHERT, ANDREAS REITER, and RUDOLF SCHMIDT

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Appeal 2009-009692  
Application 10/788,569  
Technology Center 3700

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Before: WILLIAM F. PATE, III, JENNIFER D. BAHR, and FRED A.  
SILVERBERG, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

Anton Stempfle et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision under 35 U.S.C. § 103(a) rejecting claims 8-12 as being unpatentable over Takeda (US 5,934,088, iss. Aug. 10, 1999) and Stamp (US 4,381,549, iss. Apr. 26, 1983) and claims 13-15 as being unpatentable over Takeda, Stamp, and Suzuki (US 4,663,940, iss. May 12, 1987). We have jurisdiction under 35 U.S.C. § 6(b).

## THE INVENTION

The claims are directed to a refrigerating appliance. Claim 8, reproduced below, is the only independent claim involved in this appeal, and is illustrative of the claimed subject matter.

8. A refrigerating appliance, comprising:
  - an inner chamber enclosed by a heat-insulating housing;
  - a plurality of electrical or electromechanical components coupled to said inner chamber;
  - said components including a coolant circuit for cooling said inner chamber;
  - said components including at least one temperature sensor;
  - a control unit for controlling the operation of said components, said control unit including a test operating mode for checking the operativeness of at least some of said components; and
  - said control unit checking the operativeness of said coolant circuit if first checking the operativeness of said temperature sensor does not provide an indication of a malfunction of said temperature sensor.

## SUMMARY OF DECISION

We AFFIRM.

### OPINION

The issue raised in this appeal is whether the combined teachings of Takeda and Stamp render obvious the subject matter of claim 8. Appellants argue that Takeda and Stamp do not teach or render obvious, and in fact teach away from, a refrigerating appliance having a control unit which (1) checks the operativeness of the coolant circuit only if the check for the operativeness of the temperature sensor does not provide an indication of a temperature sensor malfunction or (2) stops checking the operativeness of the coolant circuit if a temperature sensor malfunction is indicated. App. Br. 9-14.

We adopt the findings, reasoning, and conclusion of the Examiner on pages 3-7 of the Answer. Of particular interest, the Examiner found that Takeda discloses a temperature sensor (clog sensor 24) which detects a temperature T4 of refrigerant at the outlet side of condenser 16. Ans. 5; Takeda, col. 3, ll. 14-16. Takeda uses this clog sensor 24 in checking the operativeness of at least some components of the coolant circuit. Takeda, col. 6, ll. 35-45 (detection of a temperature T4 higher than a predetermined temperature for more than 5 minutes is recognized as an abnormality indicative of a problem with the operativeness of at least one of the components of the coolant circuit and is flagged as an error E7). The Examiner found that the clog sensor 24 is used to evaluate condenser function, and Appellants do not contest this finding. See Ans. 5. Takeda also checks the operativeness of the clog sensor 24. Takeda, col. 7, ll. 7-25 (discussing detection of disconnection or short circuit of clog sensor 24).

The Examiner further found, correctly, that Stamp teaches checking the operativeness of a temperature sensor before using that temperature sensor to evaluate the proper operation of other functions of the system.

Ans. 5; Stamp, col. 9, ll. 1-5. The Examiner then concluded it would have been obvious to check the operativeness of the temperature sensors in Takeda's system before using them to evaluate other functions of the system, in order to prevent erroneous malfunction indications in view of the teachings in Stamp. Ans. 5.

The Examiner's conclusion that the proposed modification of Takeda in view of Stamp would have been obvious has rational underpinning because, as we found above, Takeda relies on the clog sensor 24 to check the operativeness of the coolant circuit. As ostensibly recognized by Stamp, reliance on an inoperative temperature sensor in evaluating system performance would yield useless or misleading results.

Appellants' arguments are not persuasive of error in the Examiner's conclusion that the subject matter of claim 8 would have been obvious, because they are not commensurate with the scope of the claimed subject matter. It is well established that limitations not appearing in the claims cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Specifically, as pointed out by the Examiner on pages 4-7 of the Answer, claim 8 does not: (1) require that the control unit check the operativeness of the coolant circuit only after a check of the operativeness of the temperature sensor indicates the temperature sensor is functioning; (2) recite that the control unit will not perform a check of the operativeness of the coolant circuit if a temperature sensor malfunction is indicated; (3) specify what happens if a malfunction in the temperature sensor is indicated; or (4) require the control unit to rely on the temperature sensors to evaluate all other functions of the system.

We sustain the rejection of claim 8 and of claims 9-12, for which Appellants have not asserted any separate argument for patentability and which thus fall with claim 8. *See* 37 C.F.R. § 41.37(c)(1)(vii); App. Br. 14.

In contesting the rejection of claims 13-15 as being unpatentable over Takeda, Stamp, and Suzuki, Appellants rely solely on the arguments asserted for claim 8. For the reasons discussed above, these arguments are not commensurate with the scope of the claims, and thus are not persuasive. We sustain the rejection.

#### DECISION

For the above reasons, the Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

#### AFFIRMED

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